

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:10-CV-1-H

UNITED STATES OF AMERICA

PLAINTIFF

V.

WILLIAM A. SMITH JR. and
DONNA J. SMITH

DEFENDANTS

ORDER

Having considered the United States' motion for summary judgment, the memorandum of law, and any opposition thereto, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the United States' motion for summary judgment is SUSTAINED.

IT IS FURTHER ORDERED that judgment shall be entered in favor of the United States and against William A. Smith, Jr., with respect to his federal income tax liability for the 2000, 2001, and 2004 tax years, in the amount of \$436,934.95 as of September 12, 2011, plus statutory additions to tax, accruing from and after that date, until paid.

IT IS FURTHER ORDERED that the federal tax liens should be foreclosed against Mr. Smith's interest in 113 Bonnie Lane, Louisville, Kentucky, and 8214 Twin Lakes Court, Louisville, Kentucky, and such Property is to be sold pursuant to 28 U.S.C. § 2001.

IT IS FURTHER ORDERED that

(1) The subject properties upon which the United States seeks to foreclose its federal tax lien is located in Jefferson County, Kentucky, and is known as 113 Bonnie Lane, Louisville, Kentucky, and 8214 Twin Lakes Court, Louisville, Kentucky (together "the Real Property").

(2) The United States Marshal for the Western District of Kentucky or his/her representative, or an Internal Revenue Service Property Appraisal and Liquidation Specialist (“PALS”), is authorized under 28 U.S.C. §§ 2001 and 2002 to offer the Real Property for sale at public auction, and to sell the Real Property to satisfy the United States’ federal tax liens against such property.

(3) The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Real Property, and any easements and restrictions of record, if any.

(4) The Real Property shall be sold by public auction to take place within Jefferson County, Kentucky, either on the premises themselves or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002.

(5) The time and place for the sale of the Real Property are to be announced by the United States Marshal, his or her representatives, or the PALS.

(6) The sale of the Real Property shall be advertised once each week for four (4) consecutive weeks preceding the time fixed for such sale in a daily newspaper of general circulation in Jefferson County, Kentucky and by any other notice that the United States Marshal or his/her representative, or the PALS in his/her discretion may deem appropriate. The notice(s) of sale shall contain a description of the property to be sold and shall contain the terms and conditions of sale in this order and decree.

(7) The Real Property shall be sold to the highest bidder with the United States having the right to withdraw the Real Property from bidding at any time prior to the acceptance of a bid, if in the opinion of the United States, the bids are inadequate.

(8) If there are any municipal liens (including county, borough, and school district property taxes) on the Real Property, the United States shall obtain from the municipality a bill, statement or claim for any delinquent amounts secured by such liens and deliver same to the United States Marshal or the PALS ten days in advance of said sale. Satisfaction of any municipal liens shall be from the sale proceeds pertaining to the property subject to such liens, and the Real Property shall be sold free and clear of such municipal liens.

(9) No bid on the Real Property (except as to the United States) shall be accepted unless the same is accompanied by a certified check or a cash deposit of at least ten percent (10%) of the amount of the bid. Before being permitted to bid at the sale, bidders shall display to the United States Marshal, his/her representative, or to the PALS proof that they are able to comply with this requirement. No bids will be received from any person who has not presented proof that, if they are the successful bidder, they can make the deposit required by this order.

(10) The balance of the purchase price of the Real Property shall be paid to the United States Marshal or the PALS (whichever person is conducting the sale as arranged by counsel for the United States) within sixty (60) days after the date the bid is accepted. Payment shall be by a certified or cashier's check payable to the United States Marshal for the Western District of Kentucky if the sale is conducted by the Marshal or to the Clerk of the United States District Court for the Western District of Kentucky in the case of the PALS. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied first to cover the expenses of the sale, with any amount remaining to be distributed to the United States, to be applied against the tax liabilities of William Smith, and the Real Property shall be again offered for sale under the terms and conditions of this order.

(11) The sale of the Real Property shall be subject to confirmation by this Court. On confirmation of the sale, the United States Marshal or the PALS shall execute and deliver a deed of judicial sale conveying the Real Property to the purchaser(s). On confirmation of the sale, all interests in, liens against, or claims to, the Real Property that are held or asserted by the United States are discharged and extinguished.

(12) No later than twenty (20) days after receipt of the balance of the purchase price, the United States Marshal or the PALS shall file a report of sale with the Court, together with a proposed order of confirmation of sale and proposed deed.

(13) The recorder of deeds of Jefferson County, Kentucky, shall proceed to record the deed in favor of the purchaser(s).

(14) Until the Real Property is sold, the Defendants, William Smith and Donna Smith, shall take all reasonable steps necessary to preserve the Real Property (including all improvements, fixtures and appurtenances) in its current condition including, without limitation, maintaining fire and casualty insurance on the Real Property at their own expense. William and Donna Smith shall not commit waste against the property, nor shall it cause or permit anyone else to do so. They shall not do anything that tends to reduce the value or marketability of the Real Property, nor shall they cause or permit anyone else to do so. They shall take no action which may tend to deter or discourage potential bidders from participating in the public auction.

(15) All person occupying the Real property shall permanently leave and vacate the premises upon receiving thirty (30) days notice from the Internal Revenue Service, taking with them their personal property but leaving all improvements, buildings, fixtures, and appurtenances to the Real Property. If any person fails or refuses to vacate any of the Real

Property by the time specified in this order, the United States Marshal's Office is authorized to take whatever action it deems appropriate to remove such person from the premises of the Real Property. If any person fails or refuses to remove personal property, such property is deemed forfeited and abandoned, and the Internal Revenue Service is authorized to dispose of such personal property in any manner it deems appropriate, including, but not limited to, the sale of such personal property. The proceeds of the sale from any such personal property shall be applied first to the expenses of sale, and then remitted to the Plaintiff to be applied toward Defendant, William A. Smith, Jr.'s unpaid federal income tax liabilities. Other than the expenses of the sale of abandoned personal property, any costs incurred or associated with a person's failure or refusal to vacate the Real Property or to remove personal property therefrom, shall be administrative costs of the sale and shall be recovered by PALS from the proceeds of the sale.

(16) If the United States Marshal, or his or her representative, conducts the sale, the proceeds from the sale of all of the Real Property shall be distributed in the following order:

- a. First, to the United States Marshal for the costs of the sale(s).
- b. Second, to any municipality to satisfy any municipal liens (including county, borough, and school district property taxes) on the Real Property as stated in paragraph 8 above.
- c. Third, one-half of the remaining proceeds shall be distributed to Donna Smith, by virtue of her interest in the Real Property.
- d. Fourth, any remaining balance to the United States, on account of its federal tax liens, to satisfy the \$436,934.95 owed by the Taxpayer, as of September 12, 2011, plus any interest and penalties that have accrued.

e. Fifth, any surplus of the sale proceeds from the Real Property shall be returned to William A. Smith.

(17) If the PALS conducts the sale of the Real Property, the United States shall apply to the Court for a distribution order requiring the Clerk of the Court to make payments in accordance with and under the conditions set forth in paragraph 15 above, except that any expenses of sale will be paid to the PALS instead of the United States Marshal.

cc: Counsel of Record